



## BRINGING FULLY COMPETITIVE BROADBAND TO AMERICA<sup>1</sup>

**FILED ELECTRONICALLY**

July 25, 2007

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: *Ex Parte* Presentations in MB Docket No. 07-29, MB Docket No. 05-311, and CSR -7108

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, The Broadband Service Providers Association (BSPA) submits this notice of an *ex parte* presentation in the above-captioned proceedings.

On July 24, 2007 Bill Heaston, Director, Governmental Affairs, PrairieWave; Richard Ramlall, SVP, Strategic & External Affairs, RCN; Gary Evans, CEO, Hiawatha Broadband; and I had meetings on behalf of the Broadband Service Providers Association (BSPA) with Michelle Carey, legal advisor to Chairman Martin, to discuss the Commission's rulemaking on the further extension of the prohibition against exclusive contracts as part of Section 628 and cable franchising related to existing competitive franchises and CSR-7108.

At these meetings we discussed the policy recommendations made by the BSPA and its members as part of comments filed in MB docket No. 07-29 and application of the new franchise rules adopted by the commission as part of MB Docket No. 05-311 as they might apply to existing competitive franchises as recommended in the Further Notice for Proposed Rulemaking for franchise reform.

In addition to the policy recommendations that were part of written comments submitted to the commission we discussed the current franchise negotiations between Knology and the City of Montgomery Alabama and the City of Huntsville Alabama. We also discussed the approval process underway at the Office of Management and Budget as it relates to the Paperwork Reduction Act and a letter filed by the BSPA in support of OMB's immediate approval of the new FCC Franchising Order.

---

<sup>1</sup> The current members of BSPA, all of which are last-mile, facilities-based providers, are: Everest Connections, Hiawatha Broadband, Knology, PrairieWave Communications, RCN, and SureWest Communications. BSPA is located at 1601 K Street NW, Washington, DC 20006. Phone: 202.661.3945

Page 2

As a further matter we offered support for The America Channel (TAC) and its policy efforts related to the Petition of Comcast for Declaratory Ruling CSR-7108, referring to TAC sports programming carriage as an example of “must have” programming that has been agreed to with RCN and Hiawatha Broadband.

By: /s/  
John Goodman, Executive Director,  
BSPA  
1601 K Street NW  
Washington, D.C. 20006  
(202) 661-3945

cc: Michelle Carey

Broadband Service Providers Association (BSPA)  
July 24, 2007 FCC Meeting Agenda  
Michelle Carey

BSPA Attendees: Richard Ramlall, RCN  
William "Bill" Heaston, Knology/PrairieWave  
Gary Evans, Hiawatha Broadband  
John Goodman, BSPA

1. Introduction

2. Program Access

- Assured access to programming is essential to competition. Any diminished access to content will harm both current and desired competition.
- We recommend extension of the current rules with strengthened enforcement procedures.
- A minimum of 5 years
- Better discovery with appropriate assured confidentiality
- 90 day complaint proceedings
- Use of binding arbitration to resolve pricing disputes
- The current rules have been historically essential and have caused no harm.
- We request FCC support to close the Terrestrial Loophole.

3. Broadband

- There is direct connection between effective program access rules and the further development of Broadband.
- New wireline investments will be for bundled services.
- Video revenues are essential for the economic success of capital investments. They represent from 35-55% of total network revenues.
- You cannot treat video and broadband issues as completely separate service offerings for wireline networks.
- Wireline networks offer compelling solutions to rural broadband issues.
- A new GAO Study should isolate and study different segments of the industry to identify the impact of different types of competitive markets and service offerings.

4. Franchising

- We fully support the application of the new FCC Franchising Rules to competitive franchise renewals.
- Knology examples from Huntsville and Montgomery.
- BSPA has endorsed OMB approval of the FCC Franchising Order.

Ms. Marlene H. Dortch, Secretary

July 25, 2007

Page 4

- Letter submitted to OMB.
- The net effect of the franchising order will be a reduction in paperwork, not an increase.

Ms. Marlene H. Dortch, Secretary  
July 25, 2007  
Page 5

Jasmeet K. Seehra  
Office of Management and Budget  
2007  
Room 10236 NEOB  
725 17<sup>th</sup> Street, NW  
Washington, DC 20503

July 20,

Re: Public Comments with respect to the Submission of an  
Information  
Collection for Approval to the Office of Information and  
Regulatory Affairs of the Office of Management and Budget

*In the Matter of*  
(47 C.F.R.) Section 76.41, Franchise Application Process  
As Adopted by the FCC in Docket 05-311 on December 20, 2006

Dear Ms. Seehra:

Please accept these comments on behalf of The Broadband Service Providers Association ("BSPA"), in response to the recent Paperwork Reduction Act Submission titled Section 76.41, Franchise Application Process submitted by the Federal Communications Commission (Commission). This letter responds to the request for comments regarding whether the collection of information is necessary to the proper performance of the Commission and respond to the solicitation of comments regarding the accuracy of the Commission's burden estimate.

The BSPA is an organization of competitive last-mile service providers. Broadband Service Provider ("BSP") networks offer state-of-the-art cable, telephone, and Internet service over advanced local networks in many urban, suburban and rural areas throughout the country. BSPs are key examples of the entry of new, facilities-based competitors envisioned by the 1996 Act. While BSPs still represent a relatively small segment of the total industry, they have emerged as multi-faceted competitors offering significant price and service options to consumers for video, voice, and broadband access. This business model to offer bundled voice, video and data services has now become a model for many network upgrades or new construction that are being pursued by incumbent cable operators, incumbent telephone companies or other new technology entrants. The BSPA's mission is to promote and support the development of a competitive, facilities-based, broadband industry which will increase infrastructure investment, create customer choice, lower prices, and provide critical network diversity. BSPs provide direct competition to incumbent cable operators and other multichannel video programming distributors ("MVPDs"), and therefore offer a unique insight into the status of competition in the market for delivery of video programming.

It has come to our attention that there are parties opposing Office of Management and Budget (OMB) approval because they allege that the recent submission from

the Commission is burdensome. The BSPA strongly disagrees with these comments and urges OMB to move and approve the Commission's Order as soon as possible. BSPA member companies represent a majority of the competitive franchises that were negotiated in the 1996-2000 time frame. Our experience in this competitive franchising process was part of the public record that contributed to the FCC's decision to enact new franchise negotiation procedures that can support a more efficient and effective regulatory structure for the continued growth of competition. After hearing from numerous parties on both sides of the franchise reform issue, the Commission adopted a well-balanced and reasonable order.<sup>2</sup> The BSPA has fully endorsed the implementation of the new FCC franchising procedures and made a further request that the new rules also apply to the franchise renewal process. BSPA members are now reaching the end of the original franchises and have experienced the same issues for a renewal that were encountered for the original franchise.

The new rules proposed by the FCC will clearly reduce not increase the amount of paper work associated with obtaining either new or renewal franchises. We can testify that the actual amount of required documentation that is filed for a franchise proceeding under the new rules will be less than the existing structure. Beyond that, the greatest amount of actual paperwork reduction will come from a very significant reduction or elimination of the open-ended franchise negotiation cycles that are experienced in today's regulatory environment where too many issues are left open to debate.

For example, Knology Inc. (Knology) is a BSP operating 11 broadband networks in 8 states that is currently negotiating renewal cable franchise agreements in 2 Alabama markets, Montgomery and Huntsville. Knology has been in negotiations with the Montgomery LFA for over two years without a resolution. Similarly, the renewal negotiations with the Huntsville LFA have been going on for nearly three years. As a result, extensive need assessment documents and franchise documents have been drafted and exchanged between the parties with no agreements reached. Knology of Alabama, a subsidiary of Knology Inc., holds statewide telephone authority in Alabama and provides telephone service in both Montgomery and Huntsville. In order to accelerate the renewal process Knology of Alabama (telephone subsidiary) filed applications for cable franchises in both cities that are consistent with the new FCC guidelines and procedures. The 2 applications required less than 8 hours to complete. The cities rejected the applications pending OMB's approval.

The Commission has created a far more efficient process by addressing and resolving many of the issues that have previously caused disputes between the applicants and LFAs. For example, the Commission's order requires the LFAs to

---

<sup>2</sup> *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992, Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd. 5101, ¶15 (2007) (*Franchise Order*).

make a decision in a defined period of time. In addition, the order specifically limits and defines the information that an applicant must submit to LFAs, thereby eliminating any confusion between the applicant (in this case, the entering video provider seeking franchise approval) and the relevant LFA.

In closing, the BSPA and its member companies urge OMB to move and approve the Commission's pro-competitive and deregulatory Order. Please feel free to call me with any questions.

Sincerely,

John D. Goodman  
Executive Director, BSPA  
612-839-2329

cc: Cathy Williams, Federal Communications Commission

**Knology, Inc.**  
**Franchising Further Notice, MB Docket No. 05-311**  
**Ex Parte Meeting, July 25, 2007**

- 626 Rules should apply to competitive franchises up for renewal.
- Knology filed comments on April 20, 2007
  - (1) Commission should extend existing rules to competitors to preserve competition.
  - (2) Negotiations have been going on for 2 years in Montgomery, Alabama.
  - (3) City of Montgomery has requested PEG fees per subscriber per month and education and Government access capital support in addition to 5% franchise fee.
  - (4) City of Montgomery rejects the Commission's decision in MB Docket No. 05-311. See Reply Comments City of Montgomery, May 7, 2007.
  - (5) The City rejected a franchise consistent with the rules adopted by the Commission for new telephone company entrants. See Letter from Counsel for the City of Montgomery.
  - (6) City of Huntsville has alleged timing as a result of requiring Knology to agree to a master telecommunications ordinance not

yet complete and approved by the City Council placing Knology in an awkward position from which to negotiate. *See* Knology Exparte filing.

- (7) The City of Montgomery had indicated a desire for further negotiations to resolve the open issues.
- (8) Without prior notice to Knology, the Montgomery City Council voted to begin the process to cancel Knology's Franchise.